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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/766,654 | 01/27/2004 | Younger Ahluwalia | 03137.000005. | 3974 |
| 5514 7590 02/26/2009 FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112 | | | | |
| EXAMINER | | | | |
| RUDDOCK, ULA CORINNA | | | | |
| ART UNIT | | PAPER NUMBER | | |
| 1794 | | | | |
| MAIL DATE | | DELIVERY MODE | | |
| 02/26/2009 | | PAPER | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/766,654

Applicant(s)

AHLUWALIA ET AL.

Examiner

Ula C. Ruddock

Art Unit

1794

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Ula C Ruddock/
Primary Examiner, Art Unit 1794

Continuation of 11, does NOT place the application in condition for allowance because: the previously set forth rejections are maintained. Applicant argues that the addition of a substrate would affect the basic and novel characteristics of the invention. However, it is the Examiner's opinion that the addition of a substrate would not affect the basic and novel characteristics of the present invention because the strength of the composite is not the novel characteristics of the present invention. Applicant further argues that the combination of the cited prior art does not teach or reasonably suggest that the "coating does not bleed through said substrate." Applicant argues that "The Office Action provides no rationale whatsoever as to how the composite materials disclosed in Ahluwalia '257 would need to be modified in order to achieve a new composite material which includes the admittedly lacking elements of Claim 1 and a coating that does not bleed through the substrate. Nor does the Office Action provide any rationale as to how the composite materials disclosed in Ahluwalia '257 could be modified to include the admittedly lacking elements of Claim 1 while maintaining a coating with essentially the same ionic charge as the substrate it coats and that does not bleed through the substrate. In addition, the Office Action fails to account for the leap of logic as to how characteristics of the Ahluwalia '257 composite materials will also exist in the Office Action's proposed composite material, especially when the Office Action fails to provide any level of specificity as to the specific structure and composition of the proposed composite material." This argument is not persuasive because Ahluwalia '257 does not suggest that the addition of clay would result in a coating that bleeds through the substrate. One having ordinary skill in the art would recognize that the addition of clay improves the fire resistance of a material. Applicant also argues that the aluminum sheet provides unexpected results. This argument is not persuasive because it has been held that the evidence relied "upon should establish "that the differences in results are in fact unexpected and unobvious and of both statistical and practical significance." Ex parte Gelles, 22 USPQ2d 1318, 1319. Applicant has not established this by referring to paragraphs 49 and 50 of the present specification. The test results in these paragraphs do not fairly compare the combination of Ahluwalia, Langer, GB '260, Dugan, or Dombeck to that of the present invention. Therefore, the rejection is proper and maintained.